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August 30, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Notice of Ex Parte Communication in CS Docket Nos. 98-120,
00-96 & 00-2**

Dear Ms. Dortch:

On August 29, 2002, Jon Blake and Amy Levine of Covington & Burling and Michael Berg of Shook, Hardy & Bacon L.L.P., on behalf of Gemstar-TV Guide International, Inc. ("Gemstar"), met with Stacy Robinson, Legal Advisor to Commissioner Abernathy, to discuss what constitutes "program-related material" in the digital context.

We followed up on the issues raised in Gemstar's written *ex parte* submissions filed in the above captioned dockets on August 26, 2002 and March 19, 2002. Namely, the Commission should reconsider its determination in the *Report & Order* in these proceedings that it will apply the three-part *WGN* program-relatedness test in the digital context. The *WGN* test cannot accommodate the efficient, bursty transmission of bits that is the hallmark of digital technology, and its application to digital content will stymie the potential of innovative new services that are spectrum efficient and enhance consumer service.

The Commission has full authority, and a great opportunity, to adopt a test of program-relatedness that makes sense for and facilitates digital deployment and the transition. It should therefore adopt a functional approach to determining what is program-related by classifying as "program-related" material that is delivered for free in the broadcast signal that enhances: (1) viewer access to programming; (2) viewer awareness of programming schedules, including allowing comparisons among all available programming; and (3) viewer understanding and enjoyment of programming (including through interactive enhancements). Such a flexible, case-based approach to determining what counts as "program-related material" will benefit consumers by allowing them to take advantage of innovative new technologies with the potential to greatly enhance the viewing experience.

COVINGTON & BURLING

Ms. Marlene H. Dortch

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Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan D. Blake". The signature is fluid and cursive, with a large initial "J" and "D".

Jonathan D. Blake

*Counsel to Gemstar-TV Guide
International, Inc.*

cc: Ms. Stacy Robinson